

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH JAIPUR

J U D G M E N T

The State of Rajasthan V/S Euresian Equipment
and another Chemicals Ltd.

S.B. Civil Regular First Appeal No.121/90 against the judgment and decree dated 17.2.1990 passed by Shri K.S.Chaudhary Additional District Judge, No.1, Jaipur City, Jaipur in Civil Suit No. 35/84.

Date of Judgment ::: September 1, **2006**

PRESENT

HON'BLE MR. JUSTICE KHEM CHAND SHARMA

Mrs. Sadhna Bhatt for the appellants
R.P. Agarwal for the respondent

BY THE COURT:

This appeal under Section 96 CPC arises out of the judgment and decree dated 17.2.1990 passed by the learned Additional District Judge No.1, Jaipur City, Jaipur, whereby the learned Judge has decreed the plaintiff's suit and dismissed the cross objections filed by the defendants.

The plaintiff filed a suit against the defendants
for recovery of a sum of Rs. 1,73,460/- with the

averments that an agreement came to be entered into between the parties on 13.4.1972, according to which the defendant appellants had to supply to the plaintiff respondent 5000 metric tons of sodium sulphate in monthly instalments of 450 metric tones at the rate of Rs. 500/- per ton. This was subject to the various terms and conditions enumerated in the said agreement. It is averred that on account of some dispute having arisen between the parties, the plaintiff company preferred a Writ Petition No. 388/74 before the Principal Seat at Jodhpur. During pendency of the said petition, the parties entered into a written compromise on 29.7.1976 and submitted it before this court. This court accepted the compromise and disposed of the writ petition in terms of the compromise.

After decision in the writ petition, the defendants sent a letter dated 23.8.1976 to the plaintiff, along with a proforma, thereby requiring the plaintiff to furnish a bank guarantee of Rs. 6,37,500/-. It was averred that since the bank guarantee proforma sent by the defendants contained certain clauses which were not in consonance with the terms and conditions of the compromise, the plaintiff

vide its letter dated 9.9.76 informed the Commissioner, State Enterprises Department that the proforma has been sent to the Bankers and therefore it may take some time. At the same time, the plaintiff requested the defendants that since it was mentioned in the letter that sodium sulphate was being kept reserved for the plaintiff Company, the Govt. should start despatching the goods to the plaintiff against the amount of Rs. 1,38,000/- already lying deposited with the Government. Thereafter correspondence continued between the parties in relation to execution of bank guarantee in the proforma. The plaintiff through its counsel also sent a revised draft of Bank Guarantee to the Govt. for its approval vide letter dated 18.11.76 and again requested to despatch the goods as against the amount of Rs. 1,38000/- already available with the defendants. The Commissioner State Enterprises Department vide letter dated 10.1.77 informed the plaintiff that the proforma of bank guarantee stands suitably amended and hence bank guarantee be furnished. The plaintiff further averred that since there was considerable delay in finalising the draft of bank guarantee, the period of one year for supply was reduced to half and before

further action could be taken, entire period of one year had elapsed. In these circumstances, the plaintiff through his counsel requested the defendants vide its letter dated 7.12.1977 to refund the amount of Rs. 1,38,000/- already deposited with them as an advance and also Rs. 30,000/- deposited as against security, but the defendants refused to return the amount of Rs. 1,68,000/- to the plaintiff. The plaintiff also got served a notice dated 21.11.1979 through its counsel, requesting the plaintiffs to return the aforesaid sum, but all in vain. Ultimately, the plaintiff had no option but to file the suit on the above allegations.

The defendant appellants contested the suit on the ground that despite directions, the plaintiff company avoided furnishing of Bank guarantee within the stipulated time and made false averments. The defendants averred that agreement was to be given effect only after furnishing the Bank guarantee. On the contrary the defendants averred that they suffered a loss of Rs. 5,90,402 for the reason that they kept the goods reserved for supply to the plaintiff. Lastly, the defendant appellants prayed for a decree against the plaintiff for a sum of Rs. 5,90,402/- along with

interest. The plaintiff respondent filed reply to the counter claim and denied the allegations of the appellants.

On the basis of pleadings of the parties, the trial court framed issues and at the conclusion of trial and on consideration of evidence, decreed the plaintiff's suit and rejected the counter claim raised by the defendant appellants, vide its impugned judgment and decree. Hence the present appeal.

Learned counsel appearing for the defendant appellants has challenged the findings arrived at by the court below mainly on two counts. Firstly, it has been submitted that the court below has committed serious error in holding that defendants could not prove Ex.A/6 to A/181 despite the same having been proved by the evidence of DW2 Rajendra Prasad. Secondly, it has been argued that the trial court has fallen into error in rejecting the claim of the defendant appellants by disbelieving the evidence adduced on their behalf. According to the learned counsel, DW1 Bhag Chandra and DW2 Rajendra Prasad have proved beyond doubt that the defendants kept the goods reserved for supply to the plaintiff respondent and

hence they suffered a loss of Rs. 5,90,402/-.

Per contra, Mr. Agarwal, appearing for the plaintiff respondent has supported the findings arrived at by the court below and submitted that the conclusions recorded by the trial court on the basis of appreciation of evidence in true perspective call for no interference.

I have considered the rival submissions and gone through the evidence and the impugned judgment. Having gone through the record, it appears that after entering into a compromise dated 29.7.76, the defendant appellant sent a letter dated 23.8.76 to the plaintiff company along with a draft of bank guarantee, thereby requiring the plaintiff company to furnish bank guarantee of Rs. 6,37,500/-. Having gone through the draft of bank guarantee sent by the defendants it appears that it was not in accordance with the compromise dated 29.7.1976 entered into between the parties and the writ petition referred to above was also decided in the light of the said compromise. That being so, the plaintiff sent an amended draft to the defendants. The statement of DW2 Rajendra Prasad that since amendment in the draft was only to the extent of

language and therefore it was accepted, cannot be believed, inasmuch as the witness could not state as to what was the difference of language. On seeing the draft sent by the defendant appellants, it becomes clear that certain conditions were imposed therein which were not in consonance with the compromise dated 29.7.96 and that being the reason the plaintiff sent the draft of bank guarantee to its banker.

The defendants vide letter dated 23.8.1967 asked the plaintiff company to furnish bank guarantee and also sent draft of Bank guarantee Exs 2 and 3. As stated above, the aforesaid draft of bank guarantee was not in consonance with the compromise entered into between the parties, inasmuch as it included the demand of tax and excise duty, which were not the part of the compromise. Further there was no mention as to the adjustment of Rs. 1,68,000/- paid in advance by the plaintiff. That apart, few conditions which were not the part of the compromise were also incorporated in the said draft. In this view of the matter, it must be concluded that plaintiff had rightly raised a grievance for refund of the amount deposited by it with the defendants.

So far as keeping the goods to be delivered to the plaintiff company in safe condition is concerned, the trial court has come to a conclusion that defendants have not been able to prove that they kept with them the goods weighing 2800 tons in their safe custody. Another cause as has been pleaded by the appellants for the loss having been suffered by them was that they were compelled to sell the goods at the lower rate for the reason that plaintiff did not take delivery of the goods. I have gone through the evidence adduced on behalf of the defendants and it must be observed that witnesses have not been able to prove the bills Ex.A6 to A181. That apart, none of the purchaser has been examined in evidence so as to prove that they purchased goods as against the aforesaid bills produced in evidence. Surprisingly enough, signatures of the person who prepared the bills Ex.A/6 to Ex.A/181 have not been provided. Contradictions on material aspect of the matter is also one of the grounds for disbelieving the statements of defence witnesses. DW2 Rajendra Prasad states that on the day of comprise, the goods weighing 1700 tons was lying in stock and thereafter, there was production of 1400 tons of goods. The total goods to be

supplied to the plaintiff was 280 tons. Thus, even if the statement of this witnesses is taken to be at its case value, then also hardly 300 tons goods remain in stock at the end of the year, which could have been sold by the defendants. On the contrary, as per the bills produced in evidence, the plaintiffs had started selling the goods kept reserved with them. Since 2800 tons of goods were kept reserved to be supplied to the plaintiff, therefore, the defendants had no right to sell the goods prior to 28.9.1977 i.e. the last date fixed for delivery of goods as has been stated by DW1 Bhagchand. Witness Bhag Chand has admitted that goods are sold only on the order of any firm and the goods sold were not sold against the orders of the firms. Over and above, the defendants have not been able to prove as to what was the rate prevailing in the market on the day the contract was breached. In this view of the matter, the defendants are not entitled to claim loses, if at all suffered by them, from the defendants.

A glance at the impugned judgment shows that the trial court after an elaborate discussion of evidence adduced by the respective parties and that too in true perspective has rightly rejected the claim of the

defendants while decreeing the plaintiff's suit.

For the reasons aforesaid, I do not find any substance in the appeal, which is hereby dismissed with no order as to costs.

(Khem Chand Sharma), J.

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